



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23456151

Date: DEC. 12, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a legal administrator, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed his appeal and two subsequent combined motion to reopens and motion to reconsiders. In our most recent decision, we determined that the Petitioner did not present a new fact supported by documentary evidence, and the motion did not identify a specific law or policy we may have erroneously applied to the evidence of record at the time of our prior decision. The matter is before us again on a third combined motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). As noted, we dismissed the prior combined motion because the motion to reopen did not present a new fact, supported by documentary evidence, and because the motion to reconsider did not identify a law or policy that we may have erroneously applied to the evidence of record at the time of the previous decision. The review of any motion is narrowed to the basis for the prior adverse decision. Accordingly, we will examine any new facts and arguments to the extent that they pertain to our most recent decision, the dismissal of the second motions. Thus, our analysis for this combined motion is limited to the following: (1) whether we erred in concluding that the prior motion to reopen did not present a new fact, supported by documentary evidence; and (2) whether we erred in concluding that the prior motion to reconsider did not identify a law or policy that we may have erroneously applied to the evidence.

The Petitioner does not demonstrate a new fact supported by documentary evidence for the third motion to reopen, as required by 8 C.F.R. § 103.5(a)(2). Furthermore, the Petitioner does not identify a law or policy that we may have incorrectly applied in our most decision dismissing the second motion under 8 C.F.R. § 103.5(a)(3). Instead, the Petitioner references the same evidence and makes the same previous arguments, including evidence and arguments that we addressed in prior appellate and motion proceedings.¹ Because we have already discussed the documentation and claims, we need not address them again. Moreover, previously submitted evidence and arguments do not meet the motion requirements at 8 C.F.R. § 103.5(a)(2)-(3). Again, we will only examine any new facts and arguments to the extent that they pertain to the dismissal of the second motions.

The third combined motion to reopen and motion to reconsider does not include new information or evidence that overcomes the grounds underlying our decision dismissing his second motion and does not show that our previous decision was based on an incorrect application of law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

¹ We note that the Petitioner also provides his 2021 income tax documentation. The Petitioner filed his petition in 2018. Eligibility must be established at time of filing. 8 C.F.R. § 103.2(b)(1). Regardless, although the Petitioner argues that this evidence shows the significant economic impact of his proposed endeavor, the Petitioner does not explain, nor does the record demonstrate, how the evidence establishes we erred in concluding that the prior motion to reopen did not present a new fact.